LIAN LEE MOTOR SDN BHD

v.

AZIZUDDIN KHAIRUDDIN

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[CIVIL APPEAL NO: R1-11-131-1999]
4 DECEMBER 2000

SALE OF GOODS: *Motor car - Sale and purchase of - Motor car subsequently found to be stolen - Application of s. 14 of Sale of Goods Act 1957 - Whether seller had right to sell the car - Whether buyer entitled to refund of purchase price - Whether seller's defence of bona fide purchaser for value viable - Whether s. 29 of Sales of Goods Act 1957 applicable*

The appellant/plaintiff bought a motor car from the respondent/defendant. The car was subsequently seized by the police for being a stolen vehicle. The plaintiff sued for the refund of the purchase price and the defendant resisted the claim on the ground that he was a *bona fide* purchaser of the car with no knowledge of any defects relating to ownership.

The plaintiff's claim was dismissed in the court of first instance and it appealed.

Held:

[1] The transfer of property stated in s. 4(1) of the Sale of Goods Act 1957 ('the Act') constitutes the essence of a contract of sale and the seller who does not so transfer the property breaks the basic duty created by the contract and there is a total failure of consideration.

[2] There was an implied condition on the part of the defendant under s. 14(a) of the Act that he had a right to sell the car. The defendant did not have the right of possession to the car and could not consequently give it to the plaintiff. The plaintiff therefore had a right to sue for the price paid as money had and received on a total failure of consideration.

[Appeal allowed with costs.]

Case(s) referred to:
Rowland v. Divall [1923] 2 KB 500 ***(refd)***
Soon Teck Finance (M) Bhd v. Public Finance Bhd [1988] 3 MLJ 417 ***(dist)***

Legislation referred to:
Sale of Goods Act 1957, ss. 4(1), 14(a), 29

Sale of Goods Act 1893 [UK], s. 12

For the appellant - LK Cheah; M/s Lee & Wong
For the respondent - Preetam Kaur; M/s Rithauddin & Azlin

Reported by Satish PS Nair

JUDGMENT

KC Vohrah J:

The defendant wanted to buy a Proton Saga from the plaintiff. What he did on 29 May 1989 was to sell a car, a Toyota Corolla, bearing registration number CR 9806, purportedly registered with the JPJ Pahang, to the plaintiff and he used almost the whole bulk of whatever he received from the sale of that car to purchase the Proton Saga from the plaintiff on the same date.

The Toyota car was seized by the police some six months later, on 18 January 1990. It is not disputed that the car that the defendant sold to the plaintiff was a stolen car and that the registration card in respect of the car was a forgery. Neither is it not disputed that the plaintiff or the defendant had not known that the car was a stolen car.

The plaintiff sued for the refund of RM18,728.45 being the money had and received by the defendant as consideration for the Toyota car.

The defendant resisted the claim on the ground that the defendant when he originally bought the Toyota from a third party was not aware that it was a stolen car; he had been a *bona fide* purchaser of the said car with no knowledge whatsoever of defects relating to the ownership of the car and he had acquired good title in the car under s. 29 of the Sale of Goods Act 1957. The defendant also relied on *Soon Teck Finance (M) Bhd v. Public Finance Bhd* [1988] 3 MLJ 417 for the proposition that the defendant had a better title. With respect the case of *Soon Teck Finance* does not apply in this case as the plaintiff is relying on s. 14(a) of the Sale of Goods Act 1957.

Before I go to s. 14(a) of the said Act I would like to point out to s. 4(1) which states that a "contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price." The transfer of property as stated in the provision constitutes the essence of a contract of sale and the seller who does not so transfer the property breaks the basic duty created by the contract and there is a total failure of consideration. I now turn to s. 14(a) of the Sale of Goods Act 1957.

Section 14(a) reads as follows:

> 14. In a contract of sale, unless the circumstances of the sale of the contract are such as to show a different intention there is:
>
> (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
>
> (b) ...
>
> (c) ...

Section 14(a) of the said Act is equivalent to s. 12 of the English Sale of Goods Act 1893. In the English Court of Appeal case of *Rowland v. Divall* at 505 Scrutton LJ had this to say about s. 12 at 505:

> Section 12 says in express terms that there shall be 'An implied condition on the part of the seller that ... he has a right to sell the goods.' It now being a condition, wherever that condition is broken the contract can be rescinded, and with the rescission the buyer can demand a return of the purchase money, unless he has, with knowledge of the fact, held on to the bargain so as to waive the condition.

In that case the plaintiff bought a motor car from the defendant and used it for several months. It appeared that the car had been stolen before the defendant became possessed of it and therefore he had no title to it. The plaintiff was compelled to surrender it to the true owner. The plaintiff sued the defendant to recover back the purchase money that he had paid, as on a total failure of consideration.

It was held by the Court ot Appeal that notwithstanding that he had had the use of the car the consideration had totally failed, and he was entitled to get the purchase money back.

Atkins LJ had this to say at 506 and 507:

> ... there can be no sale at all of goods which the seller has no right to sell. The whole object of a sale is to transfer property from one person to another ...

> ... In fact the buyer has not received any part of that which he contracted to receive – namely the property and right to possession – and that being so, there has been a total failure of consideration ...

Now, when, in our case, the defendant sold the said Toyota to the plaintiff there was an implied condition on his part, under s. 14(a) of the Sale of Goods Act 1957, that he had a right to sell the Toyota. But there was a total failure of consideration; the plaintiff had paid the purchase price in order that he might get the car and he has not got it. The defendant did not have the right of possession to the Toyota and could not consequently give it to the plaintiff. The plaintiff has a right to sue for the price paid as money had and received on a total failure of the consideration.

We now come to the second issue: what was the price paid for the Toyota? That would be the amount that has to be refunded.

Amongst the documents in the agreed bundle of documents is the "Purchase Invoice" where the defendant had acknowledged that the agreed purchase price of the Toyota is RM18,727.75 and that he had received the sum of RM12,127.65 and that the balance of RM6,601 was to be paid to Maybank Finance Bhd. (The evidence was that the RM6,601 was to be paid and in fact was paid to Maybank Finance Bhd in order to obtain a letter of release from Maybank Finance Bhd where the defendant had obtained financing to purchase the Corolla. The letter of release enabled the defendant to sell the Corolla to the plaintiff). The purchase invoice has both the signatures of the defendant and the plaintiff's representative.

The evidence shows how the money for the purchase price was applied – as deposit for the purchase of the Proton car, payment for insurance for the Proton Saga, payment to Maybank Finance Bhd for the letter of release on the Toyota and payment of the balance sum to the defendant in cash. What matters is that the price for the Corolla was RM18,728.75 and that is what the plaintiff has claimed as refund.

The magistrate was wrong in law in deciding that the plaintiff had no right to claim for the refund on the ground that the defendant had a good title to the car and that the plaintiff had failed to show that the defendant had acquired the title of the vehicle illegally or without proper inquiry or that he was not a purchaser in good faith.

The judgment of the magistrate is reversed and judgment will be entered for the plaintiff in terms of the statement of claim paras (a) and (b). Costs here and below.